IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 696 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
SHANTABEN WD/O.RUGNATH KARAMSHI DEVJIBHAI RABARI & 3 - Defendant(s)

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Appearance :
MS MAYABEN DESAI FOR MR MD PANDYA for Appellant(s) : 1,
NOTICE SERVED for respondent(s) : 1 - 4.
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE A.S.DAVE

Date : 29/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Instant appeal under Section 110-D of the Motor Vehicles Act, 1939 ('the Act' for short) is directed against the judgment and award dated 27.4.1984 rendered in Motor Accident Claim Petition No.432 of 1982 by the Motor Accident Claims Tribunal (Aux.) Mehsana, by which the claim petition filed by the respondents herein ('the claimants' for short) to recover an amount of Rs.1,25,000/- by way of compensation on account of untimely demise of Rughnath, husband of the claimant No.1 and son of claimant Nos.2 and 3, in a road accident which had taken place on 6.1.1982 came to be partly allowed and the claimants were awarded total compensation of Rs.80,100/- together with interest at the rate of 6% per annum from the date of application till realization with proportionate costs.

2. As per the averments made in the claim petition, on 6.1.1982 during the morning hours, deceased Rughnath Karamshi Rabari, Baldevbhai and

Sagarbhai proceeded from Valsad to Sadra on Kadi Detroj road on bicycles. At 10 A.M. they reached near Jadavpura bus stop. At that time S.T. Bus bearing registration No.GRT 7916 driven rashly and negligently by its driver dashed it with the cycle of Rughnath and knocked him down as a result of the accident Rughnath had received serious injuries and died instantaneously. It is averred that the driver of the bus was rash and negligent in driving the vehicle who was in the employment of the Gujarat State Road Transport Corporation ('GSRTC' for short) at the relevant time. Therefore, GSRTC is liable under the principle of vicarious liability.

3. Putting forward the claim for compensation, it was averred that the deceased was hale and hearty and he was aged 30 years and was looking after agricultural work of his family. Therefore, the claimants have filed the claim petition to recover an amount of Rs.1,25,000 under different

heads, mainly dependency benefits which the claimants could have derived from the deceased.

4. The petition was contested by GSRTC by filing written statement at Ex.11 wherein they have raised various legal and technical objections. It denied all the averments made in the petition. So far as the negligence is concerned, according to GSRTC, the deceased himself was solely responsible for causing the accident as he was riding his bicycle on the wrong side of the road. Besides this, the tarring work of the road was in progress and tar drums were lying on the side. The deceased himself had proceeded on the road ignoring the said drum of tar which was placed there to regulate the traffic and he proceeded on the wrong side and the cycle slipped and therefore the accident took placed. According to GSRTC, the deceased himself was fully responsible for causing the accident.

So far as the quantum of compensation is concerned, it was denied that the deceased was earning the amount mentioned in the claim petition. It was also stated that the claim made by the claimants was on higher side. Therefore, it was prayed to dismiss the petition.

5. On behalf of the claimants, claimant No.2, Karamshi Devjibhai Rabari father of deceased Rughnath and two witnesses, Baldevbhai Savabhai Desai and Ishwarbhai Sankarbhai Rabari have been examined.

On behalf of the GSRTC, Maganbhai Madhavlal Patel, driver of the ST bus was examined.

6. On appreciation, evaluation, analysis and scrutiny of the evidence on record, it was held by the Tribunal that the accident was a result of rash and negligent driving on the part of the driver of the ST bus and GSRTC being the owner of

the vehicle was liable under the principle of vicarious liability.

So far as the quantification of compensation is concerned, it was held by the Tribunal that the deceased was hale and hearty and he had no vices and he could have earned Rs.500 per month very easily and accordingly assessed the monthly income of the deceased at Rs.500. To find out the correct dependency benefit available to the claimants, the Tribunal deducted Rs.150/- for personal up-keep of the deceased and accordingly the dependency benefit per month was worked out at Rs.350/- and Rd.4200 per annum. Looking to the age of the deceased who was at the relevant time at 30, the Tribunal has applied 16 purchase factor and accordingly the Tribunal worked out the dependency benefit at Rs.67,200/- The Tribunal has also awarded Rs.6500/- under the head of consortium, Rs.5,000/- for expectation of life, Rs.1000/- for obsequies ceremony expenses and Rs.400/- towards damage caused to the cycle

which in all worked out to Rs.80,100/- the break-up of which is as under:

Rs.67,200/- loss of dependency benefit

Rs. 6,500/- consortium

Rs. 5,000/- expectation of life

Rs. 1,000 obsequious ceremony expenses

Rs. 400 damage caused to the bicycle

Rs. 80,100/- in all

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The Tribunal has awarded total Rs.80,100/- to the claimants giving rise to instant appeal by the GSRTC.

7. Ms. Mayaben Desai, learned advocate for Mr. MD Pandya, learned advocate for the appellant, GSRTC has contended that the deceased himself was solely responsible for the accident. Therefore the tribunal ought to have held that the deceased was solely responsible to the fullest extent and if not to the fullest extent then he could have

been held to the extent of 50% contributory negligent. She also contended that there is no evidence about the income of the deceased. The Tribunal has assessed the income of the deceased at Rs.500 per month on the basis of the surmises and conjectures. The tribunal has applied 16 purchase factor which is on higher side. According to her, in view of the fact that the deceased was 30 years of age at the relevant time and the claimant No.1 who is the widow of the deceased who was aged 22 years at the relevant time, there were all chances of her getting remarried and therefore the claimant No.1 is not at all entitled to dependency benefit and therefore she urged that the appeal may be allowed. She also submitted that award may be suitably modified by awarding amount less than he amount awarded to the claimants.

8. We have considered the submissions advanced by Ms. Mayaben Desai, learned advocate for Mr. MD

Pandya, learned advocate of the appellant. We have also perused the impugned judgment and award and the set of evidence, copies whereof have been supplied by her during the course of her submission.

9. So far as the factum of the accident and death of Rughnath is concerned, there is no dispute.

10. To prove the claim, the claimants have examined claimant No.2 and 2 witnesses i.e., Baldevbhai and Ishwarbhai. They have also produced copy of the FIR, panchnama and autopsy report which are on record.

11. On behalf of the appellant, Maganbhai Madhavbhai Patel, driver of the ST bus was examined.

12. A perusal of the oral evidence tendered by

the claimants as well as by the appellant and the panchnama, according to us, at the place of the accident, work of road was in progress and tar drums were lying on the side of the road and from the perusal of the panchnama it cannot be said that the deceased was on the wrong side of the road. The driver of the ST bus ought to have taken reasonable care and caution which a prudent driver ought to have taken. From the evidence on record, there is no manner of doubt that the driver of the ST bus was solely responsible for causing the accident and the tribunal has also recorded the categorical finding to this effect. We endorse the said finding and accordingly it is held that the driver of the ST bus was solely responsible for causing the accident.

13. So far as the quantification of compensation is concerned, on the basis of the evidence on record tendered by way of deposition of claimant No.2 the tribunal has considered that the

deceased was engaged in agricultural work and jointly cultivating the land along with his brother and family members. Besides this, it was also stated by the claimant No.2 that Rughnath was his second son and was staying with him and looking after him and his wife. He was attending agricultural work and looking after the cattle. He owns 17 to 18 vigha of land and deceased Rughnath was personally looking after and cultivating the said land. The annual net income from the said land is Rs.10,000 to Rs.15,000.

As regards the cattle, he has testified that they have five cows and two buffaloes. Therefore, he was earning Rs.1000 per month by selling milk. Considering the totality of the evidence on record, the tribunal has assessed income of the deceased at Rs.500/- per month according to us, the said finding is in consonance with the evidence adduced by the claimants. The tribunal thereafter deducted Rs.150/- per month for

personal upkeep of the deceased and accordingly dependency benefit was worked at Rs.350/- per month which would come to Rs.4200 annually and has applied 16 purchase factor.

In the case of G.M., KSRTC v. Susamma Thomas, AIR 1994 SC 1631 the Supreme Court has observed that usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up and in instant case, considering the age of the deceased which was 30 years, the tribunal has applied 16 purchase factor and has given reason also for doing so which according us cannot be considered to be on higher side. By applying 16 purchase factors, the dependency benefit available to the family members of the deceased is worked out at Rs.67,200/-.

14. So far as awarding of Rs.6,500/- under the head of consortium, Rs.5,000/- under the head of expectation of life, Rs.1,000/- for obsequious ceremony and Rs.400/- towards damage to the bicycle is concerned, in the facts and circumstances emerging from the record, they cannot be said to be unreasonable.

15. The contention of Ms. Mayaben Desai, learned advocate for the appellant, that the claimant No.1 wife of deceased Rughnath could have married again in view of the fact that her age was 22 years at the relevant has no substance as the said submission is without any evidence and there is nothing on record to support the fact that claimant No.1 would have remarried in near future.

16. Seen in the above above context, according to us, amount of Rs.80,100/- awarded by the Tribunal to the heirs and legal representatives

of deceased Rughnath who was the breadwinner of the claimants cannot be regarded as excessive or on higher side requiring interference of this court in exercise of powers under section 110-D of the Act.

17. Seen in the above context, the appeal lacks merit and deserves to be dismissed.

18. For the foregoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

A.M. Kapadia, J.)

(A.S. Dave, J.)

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